Supreme Court, U.S.
FILED
JUL 7 - 2005
OFFICE OF THE CLERK

No. 05-72

In The
Supreme Court of the United States

DERRICK GOODWILL,

Petitioner,

v.

TEXAS A & M UNIVERSITY MEDICAL SCHOOL, RODERICK E. MCCALLUM, KATHLEEN WILLIAMS, BEN GREEN, and JOHN DOE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should Petitioner's timely filed appeal be dismissed for lack of jurisdiction because Petitioner's notice of appeal inadvertently contained an incorrect date of the judgment being appealed?

PARTIES TO THE PROCEEDING

Plaintiff-Appellant in the proceedings below was Derrick Goodwill (Petitioner).

Defendants-Appellees in the proceedings below were Texas A & M University Medical School, Roderick E. McCallum, Kathleen Williams, and Ben Green (Respondents).

OPINION BELOW

This is not a published case. The relevant judgments and orders issued by the Court have been included in the appendix to this brief.

JURISDICTION

Petitioner, Derrick Goodwill, urges the Court to take jurisdiction over this Petition and reinstate Petitioner's appeal in the Court below. Jurisdiction is appropriate under 28 U.S.C. §1254(1).

STATUTES AND REGULATIONS

Relevant provisions of Federal Rules of Appellate Procedure 3 and 4 are reproduced in an appendix to this brief.

STATEMENT OF THE CASE

Petitioner, Derrick Goodwill, submits this Petition for Writ of Certiorari and Brief, and asks that the Court grant his Petition for Writ of Certiorari and reinstate Petitioner's appeal, and grant Petitioner any and all additional relief to which Petitioner might be entitled.

Petitioner is Derrick Goodwill. Respondents are Texas A&M University Medical School, Roderick E. McCallum, Kathleen Williams, and Ben Green. Petitioner sued Respondents on issues related to discrimination. This is a case involving Petitioner attempting to become a physician after being wrongfully dismissed from his fourth year of medical school, now making him ineligible for admission to other medical schools in this country.

On or about October 29, 2004, Petitioner received the District Court Magistrate Judge's memorandum and recommendation in the case, recommending that the Court grant Respondents' motion for summary judgment. On or about November 24, 2004, the Court accepted the Magistrate Judge's recommendation and entered final judgment in the case. On or about November 26, 2004, Petitioner, through counsel, timely filed a notice of appeal. The notice contained an inadvertent error akin to a typographical one

in the form of an incorrect date for the Judgment. The notice of appeal read as follows:

> "Plaintiff, Derrick Goodwill, serves notice that he wishes to appeal the Court's Judgment on Defendants' Motion for Summary Judgment in the above-referenced cause, entered October 29, 2004. Plaintiff hereby appeals to the United States Court of Appeals for the 5th Circuit."

Petitioner, through his notice of appeal, was appealing the Court's *Judgment* on Respondents' motion for summary judgment, and *not* the Magistrate Judge's recommendation. Petitioner properly identified the document he was appealing; however, the date of the document was in error. As part of their motion for new trial, counsel for Petitioner submitted affidavits to clarify this point. The date stated in the notice was inadvertent, but did not in any way preclude one from being able to identify what was being appealed from. The judgment on Respondents' motion for summary judgment was the only judgment issued in the case. Reinstating the appeal would not prejudice Respondents in that they were already on notice of the appeal and the briefing deadlines had not started.

REASONS FOR GRANTING THE WRIT

The Court should grant Petitioner's writ because of a conflict between the circuits created in this case when the Fifth Circuit declined to follow the well-established precedent. That is, the Courts have ruled that where notice of appeal was addressed to the final judgment, the mistake of a day in the designation of the date of its entry is immaterial, and the appeal is well taken. *Porter v. Borden's Dairy Delivery Company*, 156 F.2d 798 (C.C.A. Cal. 1946); *Wilson, et al. v. Southern RY Company*, 147 F.2d 165 (5th Cir. 1945); *Shannon, et al. v. Retail Clerks, International Protective Association, et al.*, 128 F.2d 553 (7th Cir. 1942); *Labiche v. Legal Sec. Life Insurance Company*, 31 F.3d 350, *rehearing denied*, 39 F.3d 322 (5th Cir. 1994). An appeal is not lost if a mistake is made in designating the judgment appealed from. *Ross v. Global Marine, Inc.*, 859 F.2d 336 (5th Cir. 1988). The Federal Rule of Appellate Procedure requiring

that a notice of appeal designate the judgment or order appealed from is to be broadly construed. *Matter of Trans-American Natural Gas Corporation*, 978 F.2d 1409 (5th Cir. 1993), *rehearing denied*, 983 F.2d 1060 (5th Cir. 1993). An error in designating the judgment from which an appeal is taken should not bar the appeal, where the intent to appeal the particular judgment can be fairly inferred and the opposing party is not prejudiced nor misled by the mistake. *Ibid.* As in the above cases, Petitioner's mistake as to the date of the judgment should not bar his appeal.

The Court's action in this case would deny due process and equal protection to many litigants and is therefore a matter of great import. The aggrieved litigants are typically minority or low-income litigants, and when such technicalities as are involved here are utilized they have a tendency to prevent these litigants access to the Courts where they have a right to attempt to redress their grievances. In this case, the Court's action infringed upon a property interest of Petitioner.

An appeal will not be dismissed for a mere technicality if the intent to appeal from a specific ruling can be fairly inferred, and the opposing party is not prejudiced. *Torres v. Oakland*, 487 U.S. 312, 316 (1988). In the case at hand, a Magistrate did not issue an order on the dispositive motion since the State had not agreed to permit the magistrate to handle the matter. The Magistrate was only empowered to make recommendations to the court and that is what the magistrate did. The recommendation does not say that it is an order, and hence one looking at the matter would not believe that this is what was being appealed from – even though the date on the Notice of Appeal was the same date on the Magistrate's Recommendation. The courts are to liberally construe what is intended as the order to be appealed from. *Forman v. Davis*, 361 U.S. 178, 181-182 (1962). Even if an order is mistakenly designated, the appellate court may nevertheless review other related parts if the intent to appeal related matters is clear from the record as a whole and the opposing party is not prejudiced thereby. *Polonski v. Trump Taj Mahal Associates*, 137 F.3d 139, 144-45 (3d Cir. 1998). It is significant in making the determination in regards to what was appealed from, if

there is only one judgment as there is in this case. *See Capital Parks v. Southeastern Advertising & Sales Systems, Inc.*, 30 F.3d 627, 630 (5th Cir. 1994).

This liberal construction of the rules has been applied in cases relating to the premature filing of notices of appeal. The Federal Rules of Appellate Procedure provide in Rule 4(a)(2) that "[a] notice of appeal filed after the court announces a discussion or order – but before the entry of the judgment or order – is treated as if filed on the date of and after the entry. This is similar to this case, except we have a better circumstance in that the notice of appeal was filed within the filing deadline, and after the court had entered its order adopting the magistrate's recommendation. The 5th Circuit has even provided that a case appealed improperly because there was no final order that was sent back to the district court on a motion to remand, was appealed properly pursuant to the initial notice of appeal that was prematurely filed and that a subsequently filed notice of appeal was a nullity. *Brown v. Mississippi Valley State University,* 311 F.3d 328 (5th Cir. 2002); and see also *Edmon v. Dallas County Sheriff's Department,* 2003 WL 21108526 (5th Cir. 2003); *Batieste v. U.S.,* 2004 WL 1284208; *Trufant v. Autocom, Inc.,* 729 F.2d 308, 309 (5th Cir. 1984); and *Cousin v. Small,* 325 F.3d 627 (5th Cir. 2003) [*in this case, the Court took jurisdiction over a prematurely filed notice*].

Once the court entered its judgment on the 24th of November and the Notice of Appeal was filed 2 days later from the only judgment granted in this case, the reasoning in *Brown* took over and the notice of appeal should have been deemed sufficient for all purposes. Petitioner's notice of appeal was filed within the 30-day time period, stated that it was an appeal to the judgment entered in the case, and properly identified the parties. A mistake as to the date of the only judgment entered in the case should not have barred Petitioner's appeal.

Even if one was to take the position that Petitioner's notice of appeal was not timely, the facts are clear that Petitioner has satisfied the standard for excusable neglect.

Thompson v. E.I. DuPont de Nemours & Company, 76 F.3d 530 (4th Cir. 1996); *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380 (1993). However, in this case, the issue relates to the sufficiency of the notice, not its timeliness, in *Thompson v. E.I. DuPont de Nemours & Company*, 76 F.3d 530 (4th Cir. 1996); *Bartnunck v. Bubak*, 941 F.2d 726 (8th Cir. 1991). Petitioner has established good cause in this case.

Left in tact, the decision of the 5th Circuit will frustrate the very purpose of the rules and years of historical precedent – besides depriving many deserving litigants of their day in court. There have been other instances where matters of procedure have been held to have Constitutional import. In *Becker v. Montgomery*, 532 U.S. 757, 121 S.Ct. 1801 (2001) the United States Supreme Court held that notices of appeal, even when they lack a signature or other technical problem, can be easily cured when brought to the attention of the attorney. In this case, the Court's rejection of the appeal was our first notice that there was concern about this matter, so the appropriate thing would have been for a request to be made that the correct date be inserted. Other cases such as *Foman v. Davis*, 371 U.S. 178, 181, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) have held that an appeal was improperly dismissed when taking the record as a whole you could determine what was intended and that the notice may have been premature. The facts of this case are very similar to *Lemke v. U.S.*, 346 U.S. 325, 74 S.Ct. 1 (1953), and the court held that the appeal should be taken. In this case the appeal was not premature, but it was mailed two days prior to the entry of the judgment. However, it expressly referenced the court's judgment granting the motion for summary judgment as being appealed from, and there was only one summary judgment and one dismissal from a summary judgment.

CONCLUSION

For these reasons, Petitioner asks the Court to grant his petition for writ of certiorari and to reinstate Petitioner's appeal in the Fifth Circuit Court of Appeals. Also, Petitioner asks that the Court grant any and all further relief to which he might be entitled either in equity or at law.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20987

USDC No. 4:02-CV-88

DERRICK GOODWILL,

Plaintiff-Appellant,

versus

TEXAS A & M UNIVERSITY MEDICAL SCHOOL, RODERICK E. MCCALLUM, KATHLEEN WILLIAMS, BEN GREEN, and JOHN DOE,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas

(Filed Feb. 9, 2005)

Before WIENER, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:

This court must examine the basis of its jurisdiction on its own motion if necessary. *Mosley v. Cosby,* 813 F.2d 659, 660 (5th Cir. 1987). In this civil rights case, the plaintiff, through counsel, filed a notice of appeal to this court from the "summary judgment" entered on October 29, 2004. The district court did not enter summary judgment on October 29, 2004; the memorandum and recommendation of the

magistrate judge was entered on that date. However, the memorandum and recommendation of the magistrate judge is not appealable to this court. *See United States v. Cooper,* 135 F.3d 960, 961 (5th Cir. 1998) (citing *Trufant v. Autocon, Inc.,* 729 F.2d 308, 309 (5th Cir. 1984)).

APPEAL DISMISSED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DERRICK GOODWILL, Plaintiff	§ § §	
v.	§	CIVIL NO. H-02-0088
TEXAS A&M UNIVERSITY MEDICAL SCHOOL, RODERICK E. MCCALLUM, KATHLEEN WILLIAMS, BEN GREEN and JOHN DOE, Defendants.	§ § § § § § §	

MEMORANDUM AND RECOMMENDATION

(Filed Oct. 29, 2004)

Pending before the court[1] is Defendants' Motion for Summary Judgment (Docket Entry No. 56) and Plaintiff's Motion to Strike (Docket Entry No. 58). The court has considered both motions, all relevant filings, and the applicable law. For the reasons set forth below, the court **RECOMMENDS** that Plaintiff's Motion to Strike be **GRANTED IN PART** and **DENIED IN PART** and Defendants' Motion for Summary Judgment be **GRANTED**.

[1] This case was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Fed. R. Civ. P. 72. Docket Entry No. 19.